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August 29, 2011

Ms. Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, D.C. 20423-0001

STB
MANAGEMENT
AUG 30 2011
RECEIVED
A

Re: STB Docket No. AB-1053 (Sub-No. 2X). Michigan
Air-Line Railway Co.-Abandonment Exemption-
Line in Oakland County, Michigan

Dear Ms. Brown:

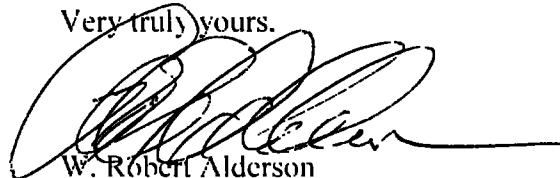
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Enclosed for filing in the above-referenced proceeding are the original and 10 copies each of Michigan Air-Line Railway Co.'s Petition for Waiver and Leave to File and the Surreply of Michigan Air-Line Railway Co. to American Plastic Toys, Inc.'s Reply and Objection to Second Petition for Exemption.

Also enclosed are additional copies of the Petition and the Surreply, and I would request that you date-stamp each of these documents and return them to me in the self-addressed, stamped envelope I have enclosed.

Thank you for your assistance in this matter. If there are any questions concerning this filing, please contact me by telephone at (785) 232-0753 or by email at the email address shown above.

Very truly yours,



W. Robert Alderson
ALDERSON, ALDERSON, WEILER,
CONKLIN, BURGHART & CROW, L.L.C.

WRA:bjb
Enclosures

cc: R. Robert Butler
Dirk H. Beckwith, Esq.

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

RECEIVED
AUG 30 2011
MANAGEMENT
STB

STB DOCKET NO. AB-1053 (Sub-No. 2X)

**MICHIGAN AIR-LINE RAILWAY CO.
- ABANDONMENT AND DISCONTINUANCE OF SERVICE EXEMPTION -
LINE IN OAKLAND COUNTY, MICHIGAN**

**SURREPLY OF MICHIGAN AIR-LINE RAILWAY CO.
TO AMERICAN PLASTIC TOYS, INC.'S REPLY AND
OBJECTION TO SECOND PETITION FOR EXEMPTION**

I. BACKGROUND

On January 28, 2011, Michigan Air-Line Railway Co. ("MAL Railway") filed with the Board in STB Docket No. AB-1053 (Sub-No. 1X) ("Prior Docket") a Petition for Exemption ("First Petition"), seeking exemption from the statutory and regulatory abandonment requirements for MAL Railway's line ("Line") in Oakland County, Michigan. On March 9, 2011, American Plastic Toys, Inc. ("APT"), the sole shipper on the Line, filed in the Prior Docket a Reply and Objection to the First Petition. On March 29, 2011, MAL Railway filed in the Prior Docket a Petition for Waiver and Leave to File, seeking partial waiver of the "no reply to reply" rule in 49 CFR § 1104.13(c), and requesting leave to file a Surreply, which accompanied the Petition.

On May 18, 2011, the Board issued its decision ("May 18th Decision") in the Prior Docket. By its May 18th Decision, the Board, among other things, denied MAL Railway's First Petition, for the following reasons:

- MAL Railway, in its First Petition, failed to provide sufficient evidence as to the expenses incurred and revenue derived by MAL Railway in the operation of the Line;
- MAL Railway's calculation of Opportunity Costs raised questions regarding the appraised value of the Line's real estate;
- MAL Railway's claimed Rehabilitation Costs were not supported by adequate documentation; and
- The Board expressed concerns regarding MAL Railway's relationship with Rail Freight Solutions, Inc. ("RFS") regarding the operation of the Line, and determined that such relationship needed clarification.

With respect to the latter point, the May 18th Decision ordered MAL Railway and RFS to provide the Board with documentation of their relationship and to show cause why the Board should not find RFS to be operating in violation of 49 U.S.C. § 10902. In compliance with that order, on June 6, 2011 a Response to STB's Decision of May 18, 2011 ("Response") was timely filed with the Board.

The May 18th Decision also granted MAL Railway's Petition for Waiver and Leave to File, and it admitted MAL Railway's Surreply into evidence.

Finally, the May 18th Decision stated that the denial of the First Petition was without prejudice to MAL Railway refiling an appropriate abandonment application or a petition for exemption which cures the defects the Board found in the First Petition, as noted above, including the lack of participation by RFS, as discussed in the Decision.

On July 1, 2011, MAL Railway filed in the above-captioned docket a Petition for Exemption ("Second Petition"), seeking exemption from the statutory and regulatory abandonment requirements for the Line. The Second Petition cures the defects noted by the Board in its May 18th Decision as follows:

- MAL Railway contracted with Bowen's Appraisal Service to update the prior appraisal of the Line. The updated appraised value enables an accurate calculation of the Line's Net Liquidation Value which is an element required for the calculation of MAL Railway's Opportunity Costs.
- MAL Railway engaged Landreth Engineering, LLC, to perform an inspection of the Line, to determine the extent of its compliance with the Federal Railroad Administration's Class 1 Maintenance Standards. Edward Landreth, P.E., performed the inspection, and he made recommendations as to actions needed for the rehabilitation of the line to FRA Class 1 Maintenance Standards. The costs of the recommended actions established the Line's maintenance and rehabilitation costs.
- MAL Railway terminated its relationship with RFS, and it has ceased using a contract operator to provide rail freight services to APT. Effective June 10, 2011, MAL Railway began providing such services directly to APT.
- MAL Railway obtained from RFS its books and records reflecting the revenues received and expenses incurred in providing rail service to APT for calendar year 2010 and for the first 5 months of 2011. MAL Railway also received a financial summary of MAL Railway's operations for calendar years 2008 and 2009. This historical data has been used to project the

revenues and expenses for a forecast year, commencing June 1, 2011 and extending to May 31, 2012.

On August 10, 2011, APT filed in the above-captioned docket a Reply and Objection to Second Petition for Exemption ("Objection").

As a condition precedent to MAL Railway filing this Surreply ("Surreply") to APT's Objection, MAL Railway has filed a Petition for Waiver and Leave to File, seeking partial waiver of the "no reply to reply" rule in 49 CFR § 1104.13(c), and requesting leave to file this Surreply. In anticipation of a favorable ruling by the Board on said Petition for Waiver and Leave to File, MAL Railway hereby submits this Surreply, the purpose of which is to demonstrate that most of the allegations in the Objection are unsupported, unwarranted and/or irrelevant, and some of which are false, and that these allegations do not provide the Board with the basis for rejecting the Second Petition.

II. RESPONSES TO ALLEGATIONS

This Surreply will provide responses to APT's allegations in its Objection, and the responses will be presented substantially in the order that the corresponding allegations are presented in the Objection.

Allegations Regarding Board's Prior Decision

APT alleges that the Board's May 18th Decision "found that the opportunity costs and rehabilitation costs alleged by MAL in the First Petition could not be relied upon as MAL failed to provide a copy of its appraisal claiming a \$5.4 million value for the Line." That is not a true statement. Rather, the Board's May 18th Decision stated as follows, regarding the appraisal:

We cannot accept MAL Railway's opportunity costs calculation due to questions regarding the assessed [appraised] value of the line's real estate, which is a key component of the opportunity costs. APT states that it was not provided with a copy of the appraisal of the line, and further contends that the appraisal is out of date and that the value that MAL Railway assigns to the line's real estate "is no longer accurate in the current Michigan economic environment." May 18th Decision 5.

While the Board, in its May 18th Decision, declined to accept MAL Railway's opportunity cost calculations because of questions regarding the Line's appraised value, including APT's assertion that it was not provided a copy of the appraisal, the Board did not state that MAL Railway's calculation of opportunity costs could not be relied upon because it failed to provide a copy of the appraisal, as APT asserted. APT did not specify in this assertion to whom the copy of the appraisal should have been provided, but considering APT's assertion within the context of the above-quoted provisions of the May 18th Decision, it is to be assumed that APT is complaining that it did not receive a copy of the appraisal.

Also, the Board did not state, as asserted by APT, that MAL Railway's rehabilitation costs could not be relied upon because of MAL Railway's failure to provide a copy of the appraisal. The Line's appraised value has nothing to do with rehabilitation costs.

Here, it also should be noted that, in connection with the Notice of Intent to File an Offer of Financial Assistance filed by Robert Alan Kemp, d/b/a Nevada Central Railroad, on March 16, 2011, MAL Railway provided a CD containing the appraisal to Vicki Rutson, Director of the STB's Office of Environmental Analysis. A copy of the transmittal letter dated April 1, 2011, is attached as Exhibit A.

Then, when APT filed its Notice of Intent to File an OFA on April 19, 2011, MAL Railway provided APT with a CD containing the appraisal. A copy of the transmittal letter to APT's attorney is attached as Exhibit B.

Allegations Regarding Prior Petition

As has been stated previously, on June 6, 2011, MAL Railway filed a Response to that portion of the Board's May 18th Decision seeking clarification of the status of RFS, and its relationship to MAL Railway. In its Objection, APT devotes all or portions of several pages to issues presented by the Response. Objection 4-7. The purpose of APT's allegations is to suggest to the Board that, in considering the Second Petition, the Board also should consider the First Petition. In fact, on page 4 of the Objection, APT states that, "taken as a whole, the Serial MAL submissions" demonstrate that the facts identified in the First Petition constitute a violation of 49 U.S.C. § 10902, and that "such a violation should also preclude this Second Petition." Objection 4.

MAL Railway respectfully suggests that APT's allegations concerning the Response and the Prior Petition should have been made in a reply or other responsive pleading to the Response pursuant to and in accordance with the time prescribed by 49 CFR § 1104.13.

Moreover, MAL Railway is unaware of any statutory/regulatory basis for APT's suggestion that the First Petition should continue to be considered in determining the validity of the Petition for Exemption filed in this Docket, and APT has not offered any legal authority for its suggested approach.

Suffice it to state, MAL Railway believes it is inappropriate to "bootstrap" the First Petition into consideration in this docket. The May 18th Decision denied the First Petition, but did so without prejudice to the refiling of a petition for exemption that "cures the defects" found in the First Petition. May 18th Decision 6. MAL Railway has stated earlier the measures it has taken to "cure the defects" of the First Petition, i.e., it has updated the appraisal, it had an inspection of the Line performed to determine maintenance and rehabilitation costs, it is now providing service directly to APT rather than through a service

provider and it has developed a forecast year to project revenues and expenses through the use of historical data. However, all of this would be for naught if APT's "Serial MAI submissions" approach is followed. There would never be an opportunity to cure the defects the Board found in the First Petition. Accordingly, MAI Railway respectfully suggests that the Second Petition be considered on its own merits, without resort to a consideration of the First Petition.

Railmark Holdings. With respect to some of the specific allegations made by APT in the context of the First Petition, APT finds the "nebulous nature" of "Rail Mark [sic] Holdings, Inc." to be "troubling." For the record, Railmark Holdings, Incorporated is an Indiana corporation in good standing. A copy of its Articles of Incorporation and accompanying certificate of incorporation issued by the Indiana Secretary of State are attached as Exhibit C. A copy of this corporation's Indiana Business Entity Report for 2010/2011 is attached as Exhibit D.

MAI Railway/RFS Agency Relationship. APT offers no legal support for the following statement at the top of page 7 of the Objection: "Agency law requires the agent to collect debts on behalf of its principal and to surrender the money to the principal." MAI Railway respectfully submits that the foregoing statement describes a possible principal/agent relationship, but agency law does not "require" that arrangement in order for an agent to collect a debt for its principal. There are other legitimate agency arrangements that may be employed for such purpose.

Allegations Regarding Verified Statements

APT makes the following statement on page 7 of the Objection:

[T]he various verified statements from Mr. Butler and Mr. Ramsey are inconsistent and have shown a continuing propensity to provide incomplete and distorted information which is [sic] been revealed in subsequent verified statements.

Subsequently, APT clarifies its concern by complaining that neither the Verified Statement of R. Robert Butler nor the Verified Statement of Marty Ramsey discloses the "amount paid by Browner-Turnout to acquire the CIT note and mortgage." Objection 8. APT contends that "the amount of hard money actually invested by Browner-Turnout is a far more relevant measure of the opportunity costs involved." *Id.* Unfortunately, APT does not offer any support for either of these statements, and MAI Railway is unaware of any statute, regulation or case decision that suggests that "opportunity costs should be based upon the amount of hard money actually invested" by a carrier or its affiliates. *Id.*

Allegations Regarding Track Maintenance

APT contends that the Verified Statement of Marty Ramsey "is incorrect and cannot be relied upon," to the extent that Mr. Ramsey relies upon the report by Landreth Engineering, LLC, "to establish year one maintenance costs." Objection 9. To support this, APT notes that the exhibits to the Landreth report suggest that MAI Railway "may qualify for FHWA-MIDOT grade crossing safety programs," and Mr. Ramsey "failed to take the potential for grant money into account." *Id.* Not only is the amount of these moneys speculative, but so is MAI Railway's ability to obtain the grants. Thus, MAL Railway respectfully submits that the report by Landreth Engineering, LLC, should be considered without speculating as to whether grant moneys might be available to MAI Railway pursuant to the FHWA-MIDOT grade crossing safety programs.

Allegations Regarding Updated Appraisal

APT claims that the updated appraisal ("Updated Appraisal") of the Line obtained by MAL Railway in June of 2011 does not comply with the Uniform Standards for Professional Appraisal Practice (USPAP) and does not comply with requirements established by the Board. Objection 9-10. The latter contention will be addressed first.

Board's Appraisal Standards. To support its contention that the Updated Appraisal does not comply with valuation standards established by the Board, APT has cited two administrative decisions, one by the ICC and the other by the Board. MAL Railway respectfully submits that neither of these cases is useful here. The decisions in both cases, as recited summarily in APT's Objection at page 10, are based upon the specific facts of the cases. Neither of these cases establishes valuation standards that are applicable generally or to the facts in this docket.

The first case, *Chicago and North Western Transportation Company-Abandonment between Ringwood, IL and Geneva, WI*, 363 I.C.C. 956, 1981 WL 22668 (I.C.C.), involved an offer of financial assistance (OFA) made in an abandonment proceeding before the ICC. The parties disagreed as to the valuation standard to be applied. The potential purchaser based its OFA on the abandoned line's NLV, while the carrier contended that the line had a value for rail transportation purposes that exceeded the NLV. The ICC determined that, based on the facts present in that case, the purchase price for the line should be set at its NLV.

With respect to the land value component of the NLV, both parties hired independent appraisers. Their respective appraisals differed significantly, and the ICC evaluated both appraisals and determined the value of the land based on the particular facts of the case.

Thus, the decision in this case was fact specific, and it did not establish generally applicable valuation standards as suggested by APT. Objection 10.

The second case is *Keokuk Junction Railway Company-Feeder Line Acquisition-Line of Toledo, Peoria and Western Railway Corporation between La Harpe and Hollis, IL*, STB Finance Docket No. 34335 (October 28, 2004). APT contends that this case establishes that, “where the line is owned in fee simple (as MAL claims here) a parcel by parcel valuation (a/k/a piecemeal) for each element of the corridor is required and that each parcel must be analyzed in terms of fee ownership rights and specifically compared to the parcels surrounding it.” (Emphasis in original.) *Id* Notwithstanding APT’s claim that this decision must be applied in the instant docket, MAL Railway respectfully submits that the *Keokuk* decision also is a fact-specific decision. *Keokuk*’s decision did not establish generally applicable valuation standards that *ipso facto* are to be applied in this docket.

The *Keokuk* case involved the purchase of a rail line pursuant to 49 U.S.C. § 10907. Under subsection (b)(1) of that statute, the Board must set the purchase price at its constitutional minimum value, which is defined in subsection (b)(2) as “not less than the net liquidation value of such line, or the going concern value of such line, whichever is greater.” The parties disagreed as to the valuation standard to be applied, including the methodology for determining the land value component. The Board’s decision addressed the specific facts of the case and did not establish standards to be applied in other cases.

USPAP Requirements. Pages 11 to 14 of the Objection express APT’s criticism of the Updated Appraisal and its contentions that the Updated Appraisal “is not reliable” (Objection 11), “is clearly defective on its face” (Objection 12), “is obviously inaccurate and misleading” (*Id.*) and fails to meet or comply with USPAP standards and should be rejected (Objection 13).

MAL Railway submitted these contentions to Don Bowen, who prepared the Updated Appraisal, and requested that he address APT's various contentions. Mr. Bowen responded by letter to MAL Railway's lawyer dated August 26, 2011. A copy of that letter is attached as Exhibit E. It is respectfully submitted that Mr. Bowen satisfactorily addresses substantially all of APT's complaints regarding the Updated Appraisal. However, there are two additional complaints that will be addressed here.

First, APT complains that the Updated Appraisal states at page 12 that "[t]he subject property was an operating railroad corridor," contending that this is inaccurate and misleading, constituting a fatal flaw. Objection 12. MAL Railway respectfully submits that the reference to the "subject property" is a reference to the entire Line, not all of which is currently an operating railroad corridor. Only the segment from Ladd Road to the CSX Interchange is currently being operated to serve APT. However, all of the Line "was" an operating railroad corridor at one time.

Similarly, APT claims that a statement on page 30 of the Updated Appraisal also is inaccurate, misleading and constitutes a fatal flaw. Objection 12. APT quotes only a portion of that statement, however. The full statement is as follows:

The photographs were taken in 2008 and 2011. In some cases the older pictures were used because: 1) The railroad rights-of-way have not been used this year and have been covered by vegetation. The original pictures show the properties better. Updated Appraisal 30.

When the full statement is reviewed and not partially quoted out of context, it is clear that the Updated Appraisal is not stating that the entirety of the right-of-way has not been used this year, as contended by APT. Rather, it is stating that, where rights-of-way have not been used this year and are covered with vegetation, older pictures of such rights-of-way have been included, since they show the properties better.

Allegations of Abandonment Exemption Abuse

APT claims that MAL Railway's "attempted use of an abandonment exemption is clearly an abuse of this process." Objection 14. APT argues that an abandonment exemption is available only where changed circumstances warrant it. *Id.* In support of that claim, APT states:

These changes are when the use of the rail line has declined to zero or near zero during the ownership. However, the current use is exactly at the same level it was when Browner-Turnout acquired the Line in November 2009: There has been no relevant change. *Id.*

APT does not offer any legal authority for its statement as to when an abandonment exemption is available. APT has ignored the Board's statement as to the standard applicable to granting an exemption from the statutes and regulations governing the abandonment of a rail line, as set forth in the Board's May 18th Decision. There, the Board denied MAL Railway's First Petition,

because MAL Railway does not provide the Board with sufficient evidence regarding the revenues and costs associated with the line, thereby making it impossible to determine what burden, if any, MAL Railway incurs in continuing to operate the line, while APT remains an active shipper on the Line. May 18th Decision 1.

MAL Railway's Second Petition has sought to cure this defect by projecting its revenues and expenses over a Forecast Year, showing the revenues to be derived and expenses incurred based upon 52 carloadings during the Forecast Year, which commenced June 1, 2011 and ends May 31, 2012. The number of carloadings for the Forecast Year was selected because in both 2009 and 2010, MAL Railway delivered 52 carloads of plastic pellets to APT. Second Petition, Ramsey Verified Statement (Exhibit E) 7. Since June 1, 2011, however, APT has received only two carloadings. In fact, from October 1, 2010 to

August 29, 2011, there have been only 15 carloadings. Clearly, APT is not using MAL Railway for the delivery of plastic pellets.

As Mr. Ramsey noted in his Verified Statement, even if APT receives 52 carloadings during the Forecast Year, MAL Railway will still recognize an operating loss of \$12,890.00, unless the fixed monthly rate is increased. *Id.* at 11. Given this projected operating loss during the Forecast Year, it is clear that the Forecast Year revenues cannot support any of the Maintenance of Way/Rehabilitation Costs.

It also is apparent that MAL Railway does not have a realistic option of increasing rates. APT claims the current level of rates is excessive. Objection 16. However, it should be noted that the monthly rate of \$7,250.00 now being charged to APT has been the monthly rate charged to APT since early in 2010.

It is respectfully submitted, therefore, that serving APT does not allow MAL Railway to earn adequate revenue, contrary to the rail transportation policy set forth at 49 U.S.C. § 10101(3).

Allegations Regarding Equipment

APT alleges that Browner-Turnout alienated the equipment necessary to fulfill its common carrier obligations, and now it pays an inflated price for a locomotive that it once abandoned to RMH and expects the Board to treat this cost as a burden. Objection 14-15. Attached hereto as Exhibit F is an email dated August 29, 2011 from Mike Runge with Sterling Rail, Inc., to Marty Ramsey, providing prices and lease rates for locomotives comparable to the locomotive now being used to serve APT. The monthly lease rate being paid by MAL Railway is \$3,000. It can be seen from Exhibit F that lease rates for such locomotives range from a monthly rate of \$3,200 for a 5-year lease and \$3,800 for a 3-year

lease. It is respectfully submitted that the lease rate being paid by MAL Railway is not an inflated rate.

Allegations Regarding MAL Railway's Service

APT complains of the "dismal service" provided by MAL Railway. Objection 16. However, MAL Railway has not received any complaints of dismal service from APT. Also, in its May 18th Decision, the Board reminded APT that, if it believes MAL is not providing adequate service, it should utilize the Board's Rail Customer and Public Assistance Program, to resolve such concerns. However, MAL Railway is not aware of any service complaint submitted to this Program by APT.

Allegations Regarding Energy Use

APT makes the following statement regarding energy use and inefficiencies:

Granting the Second Petition would increase energy use and inefficiencies. Converting to truck transport would increase truck traffic by a factor of at least four to one. The energy inefficiencies of truck transport compared to rail are well known and obvious.

This issue was addressed by the Environmental Assessment prepared in the Prior Docket, as follows:

Using the maximum number of railcars moved annually for this shipper [APT] in the past three years (i.e., 67 railcars in 2007), and a railcar to truck ratio of 1:4, shipping this material [plastic pellets] by truck rather than railcar would generate approximately 268 incoming truck trips per year (i.e., 536 round trips), or less than a dozen truck trips per week. This very limited increase in truck traffic would result in negligible impacts to air quality or the local or regional transportation networks. The proposed abandonment would also not adversely impact the development, use and transportation of any energy resources or recyclable commodities; or transportation of ozone-depleting materials. Prior Docket, Environmental Assessment 2.

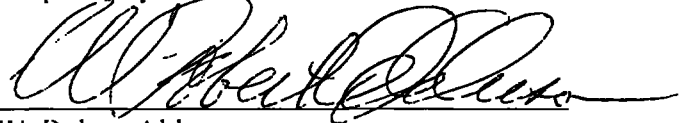
III. CONCLUSION

As shown by the foregoing, by its Second Petition, MAL Railway has cured the defects which the Board found in the First Petition. The Second Petition has shown that the

continued ownership and operation of the Line by MAL Railway will continue to be a burden on MAL Railway and on interstate commerce. None of APT's allegations, claims or complaints in its Objection has altered that conclusion. None of them provides this Board with any substantial, credible evidence that the Second Petition should be denied.

Accordingly, it is respectfully submitted that the Board should conclude that application of the regulatory requirements and procedures of 49 U.S.C. § 10903 to the abandonment of the Line proposed by MAL Railway is not required to carry out the rail transportation policy set forth in 49 U.S.C. § 10101. Further, the Board is requested to find that regulation is not required to protect APT as the sole shipper on the Line, from the abuse of market power. Moreover, it has been shown in the Second Petition that the abandonment proposal is of limited scope. Therefore, MAL Railway respectfully requests the Board to grant an exemption for the proposed abandonment of the Line.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'W. Robert Alderson', written over a horizontal line.

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Dated: August 30, 2011

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**LICENSED TO PRACTICE IN
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April 1, 2011

Vicki Rutson, Director
Section of Environmental Analysis (SEA)
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Re: STB Docket No. AB-1053 (Sub-No. 1X),
Michigan Air-Line Railway Co.-Abandonment
Exemption-Line in Oakland County, Michigan

Dear Ms. Rutson:

Enclosed is a copy of a letter sent this date to Robert Alan Kemp, d/b/a Nevada Central Railroad, who has filed a Notice of Intent to File an OFA in the above-referenced docket. As you will note from my letter to Mr. Kemp, I enclosed a CD containing an appraisal report prepared for the rail line sought to be abandoned in the above-referenced docket. I am enclosing a CD onto which I also have downloaded that appraisal for your review and use in connection with your consideration of the Combined Environmental and Historic Report included as Exhibit F to the Petition for Exemption in the above-referenced docket. I would note, however, that the enclosed CD does not contain the Petition for Exemption, which also was downloaded onto the CD sent to Mr. Kemp.

Please let me know if you have need of further information.

Very truly yours,

W. Robert Alderson
ALDERSON, ALDERSON, WEILER,
CONKLIN, BURGHART & CROW, L.L.C.

WRA:bjb
Enclosures

cc: R. Robert Butler
Dirk H. Beckwith, Esq.

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April 25, 2011

Troy R. Taylor, Esq.
Law Office of Troy R. Taylor, PLLC
107 E. Main Street, Suite 204
Northville, Michigan 48167

Re: STB Docket No. AB-1053 (Sub-No. 1X).
Michigan Air-Line Railway Co.-Abandonment
Exemption-Line in Oakland County, Michigan

Dear Mr. Taylor:

You have filed with the STB on behalf of your client, American Plastic Toys, Inc., a Notice of Intent to File Offer of Financial Assistance with Demand for Information ("Notice to File OFA") in the above-referenced docket. In the Notice to File OFA, you have requested various documents and/or information you believe is necessary to enable your client to file an Offer of Financial Assistance ("OFA"). The purpose of this letter is to respond to those requests on behalf of Michigan Air-Line Railway Co. ("MAL Railway").

Initially, however, before providing these responses, I think it is necessary to note some misstatements in the Notice to File OFA. The first of these is at the end of the first paragraph of this document, where it is stated that MAL Railway "continues to withhold actual financial information and supporting documentation required to file an OFA." Suggesting that MAL Railway "continues to withhold" implies that there has been a requirement to provide your client with "actual financial information and supporting documentation required to form an OFA," which is not true. The Petition for Exemption ("Petition") satisfies all of the requirements regarding the information to be set forth therein, and there is no other statute or STB regulation that requires MAL Railway to provide any information or documentation to APT, except in connection with the Notice to File OFA, which you filed last week on April 19, 2011.

Second, while you have correctly identified that 49 C.F.R. § 1152.27 relates to offers of financial assistance that would have relevance to this docket, the subsection you have identified does not apply. It applies, as the caption to that subsection suggests, to class exemption proceedings. A

Troy R. Taylor, Esq.

April 25, 2011

Page 3 of 3

- ◆ With respect to speed limits on the Line, the entire Line is regulated by the Federal Railroad Administration as being within Yard Limits, and no other conditions are observed by MAL Railway in its operations on the Line.
- ◆ In the Petition, there are included pertinent maps and photographs of the Line. I also am enclosing a copy of a track chart for the Line.
- ◆ Finally, please be advised that the NLV of \$5,925,500 is the minimum purchase price MAL Railway will accept for the Line.
- ◆ Substantially all of the records of MAL Railway pertaining to the Line are maintained at MAL Railway's office in Lincoln, Nebraska. You are invited to inspect those records by making an appointment to do so with Marty Ramsey, MAL Railway's CFO, (402) 420-0505.

I trust the foregoing information adequately responds to the requests in the Notice to File OFA. However, if further information is needed, please do not hesitate to contact me.

Very truly yours,

W. Robert Alderson
ALDERSON, ALDERSON, WEILER,
CONKLIN, BURGHART & CROW, L.L.C.

WRA:bjb

Enclosures

cc: R. Robert Butler
Vicki Rutson, Director
Section of Environmental Analysis (SEA)
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

STATE OF INDIANA
OFFICE OF THE SECRETARY OF STATE

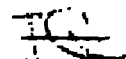
CERTIFICATE OF INCORPORATION
OF

RAILMARK HOLDINGS, INCORPORATED

I, SUE ANN GILROY, Secretary of State of Indiana, hereby certify that Articles of Incorporation of the above corporation have been presented to me at my office accompanied by the fees prescribed by law; that I have found such Articles conform to law; all as prescribed by the provisions of the Indiana Business Corporation Law, as amended.

NOW, THEREFORE, I hereby issue to such corporation this Certificate of Incorporation, and further certify that its corporate existence will begin August 27, 1998.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the State of Indiana, at the City of Indianapolis, this Twenty-seventh day of August, 1998.


Deputy



ARTICLES OF INCORPORATION

State Form 4100 (R10 / 8-83)

Approved by State Board of Accounts 1985

1998081417

WMC
SUE ANNE GILROY
SECRETARY OF STATE
CORPORATIONS DIVISION
302 W. Washington St., Rm. 8014
Indianapolis, IN 46204
Telephone (317) 232-8575

INSTRUCTIONS: Use 8 1/2" x 11" white paper for inserts.
Present original and two (2) copies to address in upper right corner of this form.
Please TYPE or PRINT.
Upon completion of filing, the Secretary of State will issue a receipt.

APPROVED
AND
FILED

Indiana Code 23-1-21-2
FILING FEE: \$60.00

IND. SECRETARY OF STATE

ARTICLES OF INCORPORATION

The undersigned, desiring to form a corporation (hereinafter referred to as "Corporation") pursuant to the provisions of:

☒ Indiana Business Corporation Law

☐ Indiana Professional Corporation Act 1983, Indiana Code 23-1.5-1-1, et seq. (Professional corporations must include Certificate of Registration.)

As amended, executes the following Articles of Incorporation:

ARTICLE I - NAME AND PRINCIPAL OFFICE

Name of Corporation (the name must include the word "Corporation", "Incorporated", "Limited", "Company" or an abbreviation thereof)

RailMark Holdings, Incorporated

Principal Office: The address of the principal office of the Corporation is:

Post office address

916 Vine St.

City

Connersville

State

IN

ZIP code

47331

ARTICLE II - REGISTERED OFFICE AND AGENT

Registered Agent: The name and street address of the Corporation's Registered Agent and Registered Office for service of process are:

Name of Registered Agent

R. Powell Felix

Address of Registered Office (street or building)

916 Vine St.

City

Connersville

Indiana

ZIP code

47331

ARTICLE III - AUTHORIZED SHARES

Number of shares the Corporation is authorized to issue: 1000

If there is more than one class of shares, shares with rights and preferences, list such information as "Exhibit A."

ARTICLE IV - INCORPORATORS (the names) and address(es) of the incorporators of the corporation)

NAME	NUMBER AND STREET OR BUILDING	CITY	STATE	ZIP CODE
<u>R. Powell Felix</u>	<u>916 Vine St.</u>	<u>Connersville</u>	<u>IN</u>	<u>47331</u>

In Witness Whereof, the undersigned being all the incorporators of said Corporation execute these Articles of Incorporation and verify, subject to penalties of perjury, that the statements contained herein are true.

This 27th day of August, 19 98

Signature

R. Powell Felix

Printed name

R. Powell Felix

Signature

Printed name

Signature

Printed name

This instrument was prepared by: (name)

R. Powell Felix

Address (number, street, city and state)

916 Vine St.

Connersville, IN

ZIP code

47331

INDIANA BUSINESS ENTITY REPORT

Indiana Secretary of State

6/24/2010 3:11:22 PM

Filer Name

B ALLEN BROWN II

Filer Title

PRESIDENT

Years Filed

2010/2011

Entity name and current principal office address

RAILMARK HOLDINGS, INCORPORATED
840 NORTH PONTIAC TRAIL
WALLED LAKE, MI 48390

Entity Creation Date

8/27/1998

Domicile State

INDIANA

Entity Type

FOR-PROFIT DOMESTIC CORPORATION

Current registered agent and registered address

INCorp SERVICES, INC.
756 NORTH MAIN STREET
SUITE K
CROWN POINT, IN 46307-0000

Current principal(s) and address(es)**PRESIDENT**

B ALLEN BROWN II
840 NORTH PONTIAC TRAIL
WALLED LAKE, MI 48390

SECRETARY

B ALLEN BROWN II
840 NORTH PONTIAC TRAIL
WALLED LAKE, MI 48390

TREASURER

B ALLEN BROWN II
840 NORTH PONTIAC TRAIL
WALLED LAKE, MI 48390

Bowen's Appraisal Service
REAL ESTATE APPRAISAL AND CONSULTATION SERVICE

DONALD E. BOWEN, II, ASA CERTIFIED GENERAL APPRAISER 630 OAKWOOD ROAD
TELEPHONE. (248) 891 – 5060 ORTONVILLE, MICHIGAN 48462
E-MAIL BOWAPPSER@CHARTER.NET

Via E-Mail only:

Dear Mr. Alderson, Esquire:

Following are my responses to the "objections" of my appraisal of the Michigan Air-Line Appraisal, dated June 30, 2011.

- 1.) The appraisal assignment was to estimate the ATF (Across the Fence Value) for the subject property. A brief description of each property was included in the report. Each property was identified by its specific tax parcel identification number.

The ATF valuation was based on land value of the individual adjacent properties. Legal descriptions were reviewed. The amount of railroad frontage for each parcel was based on the legal descriptions. In some cases, the legal descriptions did not include the amount of frontage. In these cases, the frontage was estimated. Parcels with estimated "frontages" are *Italicized* on the charts. This was explained in the report.

The Uniform Standards of Professional Appraisal Practice does require title work or surveys for each appraisal assignment. It requires that the appraiser have sufficient information to produce "credible" results, in context to the appraisal assignment.

ATF appraisals usually cover many adjacent parcels. In other ATF appraisal assignments, completed for other clients, I have never had surveys or title work provided for each adjacent parcel. I have talked to other appraisers that have experience in AFT appraisals. They also assume "ordinary easements, zoning restrictions, etc."

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Each parcel was identified by a tax parcel number in the charts. The aerials (pages 186 – 192) show the individual parcels. Reference to the charts and descriptions describe each parcel, such as the first parcel on the north side of the railroad. By counting the parcels in each community, north or south side, a reader can find each parcel.

The aerials also show the value assigned to each parcel.

- 2.) A general comment is that the “objections” refer to various sections of Standard 2 -2 (a). These are standards for a Self-Contained Appraisal Report.

The appraisal report that I provided is a summary report (subject to Michigan Department of Natural Resources Land Trust Fund Requirements.) This is Section 2 – 2 (b) of USPAP.

This is an important difference. According to USPAP Standard 2 – 2 (b)

“The content of a Summary Appraisal Report must be *consistent with the intended use of the appraisal* (emphasis added) and, at a minimum...

The appraisal provided meets the intended use requirements for the clients.

The “Comment” included in Standard (2-2 (b) states: “The essential difference between the Self-Contained Appraisal Report and a Summary Appraisal Report is the level of detail of presentation.

Self-Contained Appraisals require more information. For example Standard 2-2 (a) (vii) requires that an appraiser *describe* the scope of work used to develop the appraisal.

While a Summary Appraisal Standard 2-2 (b) (vii) requires that an appraiser *summarize* the scope of work used to develop the appraisal. There is a significant difference between the presentation and amount of information between the different appraisal types.

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The "objection" continues with:

Each written or oral real property appraisal report must: (a) clearly and accurately set forth the appraisal in a manner that will not be misleading; (b) contain sufficient information to enable the intender to users of the appraisal to understand the report properly; and (c) clearly and accurately disclose all assumptions, extraordinary assumptions, hypothetical conditions, and limiting conditions as used in the assignment.

I believe that these requirements have been met. These items are covered in the report.

Next is the reference to Standard 2-2 (a) (iv). I used Standard 2-2 (b) (iv). In this case, the requirements are the same. Both Standards state:

"the statement of the real property rights being appraised must be substantiated, *as needed*, (emphasis added) by copies or summaries of title descriptions or other documents that set forth any known encumbrances."

This is an ATF appraisal. It was my opinion, that "copies or summaries of title descriptions were not needed. Assumptions were included for this. This is typical for an ATF appraisal in this area.

The "objections" continue with:

"must "state the type and definition of value and cite the source of the definition". According to the Appraisal, at Page 12, "valuation is based on vacant land values". As the subject property is in fact an operating rail line and includes improved property, the comparison with vacant adjoining land without regard to the improvements, depreciated costs, cost of removal, demolition or salvage value is misleading. At Page 13 the Appraisal claims that "a detailed analysis of the data was completed during the appraisal process. In developing the opinion of value all of the typical appraisal processes were employed." (emphasis supplied). However this is not true, as the Appraisal states, only the vacant land sales approach was employed."

The appraisal assignment was based on ATF values. Consideration of any going concern value, salvage value, etc. was not part of my appraisal assignment.

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The objection continues with:

"Further, the Appraisal asserts that it utilizes the "sales comparison approach". Appraisal at Page 12. However the recent sale of another 2.37 miles of the same Line to West Bloomfield Parks and Recreation is utterly ignored. No reasoning for ignoring a recent and relevant sale is presented. This Appraisal is clearly defective on its face."

I did the West Bloomfield appraisal. I provided both an ATF appraisal and a corridor analysis. This appraisal assignment was for an ATF appraisal. A corridor analysis was not part of my assignment.

Regarding the market data used in the report, a thorough market survey was completed. It is detailed in the report. Many other sales and listings were reviewed. The data in the report, is in my opinion the best available.

There are some newer sales that were not used for guideline purposes. Several reasons exist for their exclusion. First, they may be foreclosure sales that sold for a fraction of the former sale price.

Second, they are located in areas that are not comparable to the subject. For example, sales from areas such as Birmingham or Royal Oak were excluded. These areas have better market acceptance. The sales were reviewed, but excluded. Likewise, sales from rural areas, with lower market acceptance (lower values) were excluded.

Regarding the use of "distressed" properties reference to 2011 USPAP "Questions and Answers," Appraisal Foundation, provides some insight.

2011-02: APPRAISAL DEVELOPMENT – SCOPE OF WORK ISSUES

Use of Distress Sales in Real Property Market Value Appraisals

Question:

A client has asked me to disregard any foreclosure, real estate owned (REO), or short sales when performing market value appraisal assignments. Is this an acceptable assignment condition?

Response:

No. USPAP does not specifically address which sales should or should not be considered in an appraisal assignment. However, in real property appraisal assignments, Standards Rule 1-4(a) requires:

When a sales comparison approach is necessary for credible results, an appraiser must analyze such comparable sales data as are available to indicate a value conclusion

So, the appraiser must determine what data is relevant.

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There are many appraisal assignments where, in order to achieve credible results, it is necessary to use "distress" (e.g., REO or Short Sales) properties as comparable sales. However, foreclosure sales, defined by *Black's Law Dictionary* as "the sale of mortgaged property, authorized by a court decree or a power-of-sale clause, to satisfy the debt" are seldom based on market expectations. When there is a glut of distress sales in the marketplace, and those properties are truly comparable to the subject, it would be misleading not to use them as part (or in some cases all) of the basis for a value conclusion.

A client-imposed requirement to disregard data that may be relevant and necessary for credible assignment results would be an unacceptable assignment condition.

It is important to note that "just compensation" places other requirements into the valuation process that are not addressed in the "generic" comments found in USPAP. Therefore, there are some differences in the data used for comparison purposes, and the market value analysis.

The major reason that most of the sales used in the report are "older" is that they are not "Foreclosure sales." In my opinion, "Just Compensation" basically precludes the use of sales that have sold for say, 10% to 30% of the former sale price.

There are many residential lot sales that have sold for let's say 50% to 60% of the former values. They may be somewhat "distressed," but are considered to be valid sales. They show lower values, but are based on current market conditions.

The valuation process, in my opinion, gives the reasonable doubt to the property owners. This is consistent with standards and practice in Michigan.

The appraisal discusses the adjustment process used and the rationale for the adjustments. USPAP does not require specific adjustments. It requires that the adjustment process be explained.

The inclusion or exclusion of specific sales is based on the judgment of the appraiser. I have used the data that I feel, best represents the subject properties. I reviewed many current offerings (listings). Some listing data is included in the report. Many listings (Foreclosure/Short sales) and/or listings that were, in my opinion "optimistic, were excluded from the report.

This happens in every appraisal report.

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Also the "objection" states:

Standard Rule 2-2 (a)(b) requires that if *marketing time* (emphasis added) is longer than 12 months, the value must be discounted for time. At Page 21, the Appraisal sets forth exposure (marketing) time for residential and commercial properties which vary from 2-7 years. No time-value discount has been included in the analysis. This is contrary to Standard Rules 2-2 (a)(b) and 2-1.

There are several problems with this claim. First, this Standard Rule does not exist anymore. Marketing Time is a requirement for "financial appraisals." It is not a requirement for the appraisal that I completed. Any reference to it should be completely ignored.

I did not estimate "marketing time." I estimated reasonable exposure time.

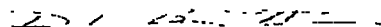
Reasonable Exposure Time and Reasonable Marketing Time are two different things. Briefly, reasonable exposure time is assumed to have happened before the effective date of the appraisal. Reasonable marketing time is an estimate of the marketing time, after the effective date of the appraisal.

Additional information on reasonable exposure time and marketing time can be found in USPAP FAQ #138, 2010-2011 Edition, The Appraisal Foundation.

I hope this information will be helpful.

Respectively,

Bowen's Appraisal Service



Donald E. Bowen, II ASA

Bob Alderson

From: Mike Runge / STERLING RAIL, INC [mjrune@sterlingrail.com]
Sent: Monday, August 29, 2011 3:20 PM
To: Bob Alderson
Subject: FW: SW900 and SW1200 Locomotives

FYI

From: Mike Runge / STERLING RAIL, INC. [mailto:mjrune@sterlingrail.com]
Sent: Monday, August 29, 2011 1:48 PM
To: 'mramsey@brownerturnout.com'
Subject: SW900 and SW1200 Locomotives

Sterling Rail has five SW900 locomotives for sale ranging in price from \$100K to \$110K. In addition, we have a SW1200 available for \$125K.

Lease rates range from \$3200/mo. for a 5-years and \$3800 for 3-years.

I hope this answers your questions, if not, don't hesitate to give me a call.

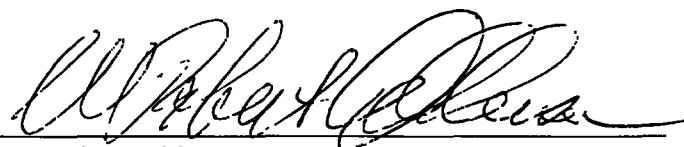
Thanks!

Michael J. Runge
STERLING RAIL, INC
3 Lakeway Centre Court Suite 230
Austin, TX 78734
PH: (512) 263-1953
FAX: (512) 263-9799
Email: mjrune@SterlingRail.com
www.SterlingRail.com

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I have on this 30th day of August, 2011, served a copy of the above and foregoing Surreply of Michigan Air-Line Railway Co. to American Plastic Toys, Inc.'s Reply and Objection to Second Petition for Exemption upon all parties of record in this proceeding, by sending a copy thereof by first-class mail, postage prepaid, to:

Troy R. Taylor
Law Office of Troy R. Taylor, PLLC
107 E. Main Street, Suite 204
Northville, Michigan 48167

A handwritten signature in black ink, appearing to read 'W. Robert Alderson', written over a horizontal line.

W. Robert Alderson